



# GENERAL ASSEMBLY

## COMMONWEALTH OF KENTUCKY

### 2009 REGULAR SESSION

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HOUSE BILL NO. 444

AS ENACTED

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THURSDAY, MARCH 12, 2009

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RECEIVED AND FILED  
DATE March 25, 2009  
2:28 pm

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TREY GRAYSON  
SECRETARY OF STATE  
COMMONWEALTH OF KENTUCKY  
BY R. Adles

AN ACT relating to deferred deposit transactions.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔ Section 1. KRS 286.9-010 is amended to read as follows:

As used in this subtitle~~[KRS 286.9-010 to 286.9-120 and KRS 286.9-990]~~, unless the context requires otherwise:

(1) "Affiliate" means a person who directly or indirectly through one (1) or more intermediaries controls or is controlled by, or is under common control with, a licensee.

(2) "Applicant" means a person filing an application or renewal application for a license under this subtitle.

(3) "Archive" means to copy data to a long-term storage mechanism apart from the database.

(4) "Cashing" means providing currency for a payment instrument.

(5) "Check" means any check, draft, money order, personal money order, travelers' check, or other demand instrument for the transmission or payment of money.

(6) "Closed" or "close" means that one (1) of the following has occurred in connection with a deferred deposit service transaction concerning the customer's payment instrument:

(a) The payment instrument is redeemed by the customer by payment to the licensee of the face amount of the payment instrument in cash;

(b) The payment instrument is exchanged by the licensee for a cashier's check or cash from the customer's financial institution;

(c) The payment instrument is deposited by the licensee, and the licensee has evidence that the person has satisfied the obligation;

(d) The payment instrument is collected by the licensee or its agent through any civil remedy available under the laws of this state; or

(e) Any other reason that the executive director may deem to be proper under

1 this subtitle.

2 ~~(7)(2)~~ "Executive director" means the executive director of the Office of Financial  
3 Institutions~~, or his duly designated representative~~.

4 (8) "Consideration" means any premium or fee charged of any kind for the sale of  
5 goods or services in excess of the cash price of the goods or services.

6 (9) "Control" means:

7 (a) Ownership of, or the power to vote, directly or indirectly, twenty-five percent  
8 (25%) or more of a class of voting securities or voting interests of a licensee  
9 or applicant, or the person in control of a licensee or applicant;

10 (b) The power to elect a majority of executive officers, managers, directors,  
11 trustees, or other persons exercising managerial authority over a licensee or  
12 applicant, or the person in control of a licensee or applicant; or

13 (c) The power to exercise, directly or indirectly, a controlling influence over the  
14 management or policies of a licensee or applicant, or the person in control  
15 of a licensee or applicant.

16 (10) "Customer" means a person who inquires into the availability of or applies for a  
17 deferred presentment service transaction or a person who enters into a deferred  
18 presentment service transaction.

19 (11) "Customer transaction data" means all data reported to the database pertinent to  
20 a particular customer transaction, including the date of the transaction,  
21 identification of the licensee and location, the sum of money involved, the time  
22 payment is deferred, fees charged, any alleged violations of this subtitle, and any  
23 identifying customer information.

24 (12) "Database" means the database described in Section 8 of this Act.

25 (13) "Database provider" means one (1) of the following:

26 (a) A third-party provider selected by the executive director under Section 8 of  
27 this Act to operate the statewide database described in that section; or

(b) The executive director, if the executive director has not selected a third-party provider under Section 8 of this Act.

(14) "Deferred deposit service business" means a person who engages in deferred deposit transactions.

(15) "Deferred deposit transaction" or "deferred presentment service transaction" means, for consideration, accepting a payment instrument, and holding the payment instrument for a period of time prior to deposit or presentment in accordance with an agreement with or any representation made to the customer whether express or implied.

(16) "Delete" means to erase data by overwriting the data.

(17) "Office" means the Office of Financial Institutions.

(18) "Identifying customer information" means the name of the customer, his or her Social Security number, driver license number, or other state-issued identification number, address, any account numbers or information specific to a payment instrument provided by a customer to a licensee, a bank, savings bank, savings and loan association, or credit union, and any other nonpublic, personal financial information of a customer entered into the database or that comes into the possession of the database provider through customer or licensee inquiry or report.

(19) "Licensee" means a person duly licensed by the executive director under this subtitle to conduct check cashing or deferred deposit service business in the Commonwealth.

(20) "Maturity date" means the date on which a payment instrument is authorized to be redeemed or presented for payment.

(21) "Payment instrument" means a check, draft, money order, or traveler's check, for the transmission or payment of money sold or issued to one (1) or more persons, whether or not such instrument is negotiable.

1 ~~[(3) "Consideration" includes any premium charged for the sale of goods or services in~~  
 2 ~~excess of the cash price of the goods or services.~~

3 ~~(4) "Deferred deposit transaction" means, for consideration, accepting a check and~~  
 4 ~~holding the check for a period of time prior to deposit or presentment in accordance~~  
 5 ~~to an agreement with or any representation made to the maker of the check, whether~~  
 6 ~~express or implied.~~

7 ~~(5) "Deferred deposit service business" means a person who engages in deferred deposit~~  
 8 ~~transactions.~~

9 ~~(6) "Office" means the Office of Financial Institutions.~~

10 ~~(7) "Licensee" means a person duly licensed by the executive director under KRS~~  
 11 ~~286.9-010 to 286.9-120.]~~

12 ~~(22) [(8)]~~ "Person" means any individual, partnership, association, joint stock  
 13 association, trust, corporation, or other entity however organized, ~~but shall not~~  
 14 ~~include the United States government or the government of this Commonwealth].~~

15 ➔ Section 2. KRS 286.9-070 is amended to read as follows:

16 (1) Upon the filing of a completed~~an~~ application in a form prescribed by the  
 17 executive director, accompanied by the fee and documents required in KRS 286.9-  
 18 060, the executive director~~office~~ shall investigate to ascertain whether the  
 19 qualifications prescribed by KRS 286.9-040 have been satisfied. If the executive  
 20 director finds that the qualifications have been satisfied, and if the executive  
 21 director~~he~~ approves the documents, he or she shall issue to the applicant a license  
 22 to engage in the business of cashing checks or deferred deposit transactions in this  
 23 Commonwealth.

24 (2) The license shall be kept conspicuously posted in the place of business of the  
 25 licensee~~and shall not be transferable or assignable~~.

26 (3) A license issued under this section shall remain in force and effect through the  
 27 remainder of the fiscal year ended June 30 following its date of issuance, unless

earlier] surrendered, suspended, or revoked under this subtitle. A license issued under this subtitle shall expire by June 30 following the date of its issuance unless renewed by the filing of a completed renewal application and payment of the required fees with the executive director[KRS 286.9-010 to 286.9-120].

(4) A licensee shall notify the executive director in writing at least[office] fifteen (15) business days before any change in the licensee's business location or name.

(5) A licensee shall file a written request for a change of control of that licensee with the executive director at least fifteen (15) business days prior to any change of control of the licensee. The executive director may require additional information considered necessary to determine whether a new application for a license is required. The person who requests the approval for a change of control shall pay the cost incurred by the executive director in investigating the change of control request.

(6) A license issued under this subtitle shall be transferable or assignable in cases of ownership changes of the business or to facilitate the transfer or assignment of a license if the licensee is closing an alternate office location, subject to approval of the executive director and based on existing criteria of new applicant approvals in accordance with this section.

(7) The executive director may deem an application or renewal application abandoned when the application received is incomplete and the applicant fails to provide any required information or fee under this subtitle or fails to respond to a request by the executive director for further information.

➔ Section 3. KRS 286.9-080 is amended to read as follows:

(1) Each license may be renewed for the ensuing twelve (12) months period upon the timely submission of a completed renewal application and payment to the executive director[office] annually on or before June 20[July 1] of each year a license fee of five hundred dollars (\$500) for the first location and five hundred

dollars (\$500) for each additional location.

(2) The executive director may reinstate a license that has expired within thirty-one (31) days of the expiration of the license if the licensee pays a late fee in the amount of one hundred dollars (\$100) and a reinstatement fee of five hundred dollars (\$500).

(3) A license shall not be reinstated where the renewal application, fees, or any required information is received on or after August 1 of the year that the application was due.

→ Section 4. KRS 286.9-100 is amended to read as follows:

~~(1) Each licensee shall keep and use in its business any books, accounts, and records the office may require to carry into effect the provisions of KRS 286.9-010 to 286.9-120 and the administrative regulations issued under those sections. Every licensee shall preserve the books, accounts, and records for at least two (2) years.~~

~~(2)~~ Any fee charged by a licensee for cashing a check or entering into a deferred deposit transaction shall be disclosed in writing to the bearer of the check prior to cashing the check or entering into a deferred deposit transaction, and the fee shall be deemed a service fee and not interest. A licensee shall not charge a service fee in excess of fifteen dollars (\$15) per one hundred dollars (\$100) on the face amount of the deferred deposit check. A licensee shall prorate any fee, based upon the maximum fee of fifteen dollars (\$15) per one hundred dollars (\$100). This service fee shall be for a period of at least fourteen (14) days.

~~(2)~~~~(3)~~ Before a licensee shall deposit with any bank or other depository institution a check cashed by the licensee, the check shall be endorsed with the actual name under which the licensee is doing business.

~~(3)~~~~(4)~~ No licensee shall cash a check payable to a payee other than a natural person unless the licensee has previously obtained appropriate documentation from the board of directors or similar governing body of the payee clearly indicating the

1 authority of the natural person or persons cashing the check, draft, or money order  
2 on behalf of the payee.

3 ~~(4)~~~~(5)~~ No licensee shall indicate through advertising, signs, billhead, or otherwise  
4 that checks may be cashed without identification of the bearer of the check; and any  
5 person seeking to cash a check shall be required to submit reasonable identification  
6 as prescribed by the executive director~~[office]~~. The provisions of this subsection  
7 shall not prohibit a licensee from cashing a check simultaneously with the  
8 verification and establishment of the identity of the presenter by means other than  
9 the presentation of identification.

10 ~~(5)~~~~(6)~~ Within two (2)~~[five (5)]~~ business days after being advised by a~~[the payor]~~  
11 financial institution that a payment instrument~~[check, draft, or money order]~~ has  
12 been altered, forged, stolen, obtained through fraudulent or illegal means,  
13 negotiated without proper legal authority, or otherwise represents the proceeds of  
14 illegal activity, the licensee shall notify the executive director~~[office]~~ and the  
15 prosecutor or law enforcement authority in the county~~[Commonwealth's attorney~~  
16 ~~for the judicial circuit]~~ in which the check was received. If a payment  
17 instrument~~[check, draft, or money order]~~ is returned to the licensee by a~~[the payor]~~  
18 financial institution for any of these reasons, the licensee shall not release the  
19 payment instrument~~[check, draft, or money order]~~ without the written consent of  
20 the prosecutor or~~[Commonwealth's attorney or other investigating]~~ law  
21 enforcement authority, or a court order.

22 ~~(6)~~~~(7)~~ No licensee shall alter or delete the date on any payment instrument~~[check]~~  
23 accepted by the licensee.

24 ~~(7)~~~~(8)~~ No licensee shall engage in unfair or deceptive acts, practices, or advertising  
25 in the conduct of the licensed business.

26 ~~(8)~~~~(9)~~ No licensee shall require a customer to provide security for the transaction or  
27 require the customer to provide a guaranty from another person.



(9)~~(10)~~ A licensee shall not have more than two (2)~~one (1)~~ deferred deposit transactions~~[transaction]~~ from any one (1) customer at any one time. The total proceeds received by the customer from all of the deferred deposit transactions shall not exceed~~[, with a face value greater than]~~ five hundred dollars (\$500).

(10)~~(11)~~ (a) Prior to the establishment of the common database of deferred deposit transactions established by Section 8 of this Act, each licensee shall inquire of any customer~~[person]~~ seeking to present a deferred deposit transaction, whether the customer~~[person]~~ has any outstanding deferred deposit transactions from any licensee~~[licensees]~~.

(b) If the customer represents in writing that the customer has no more than one (1) deferred deposit transaction outstanding to any licensee and that the total proceeds received by the customer from~~[face value of]~~ the outstanding deferred deposit transaction issued by the customer does not equal or exceed five hundred dollars (\$500), a licensee may accept a deferred deposit transaction in an amount that, when combined with the customer's other outstanding deferred deposit transaction, does not exceed five hundred dollars (\$500) of total proceeds received by the customer.

(c) If the customer represents in writing that the customer has more than one (1) deferred deposit transaction outstanding to licensees~~[any licensee]~~ or if the total proceeds received by the customer from~~[face value of]~~ the deferred deposit transactions equal or exceed~~[transaction issued by the customer equals or exceeds]~~ five hundred dollars (\$500), a licensee shall not enter into~~[accept]~~ another deferred deposit transaction with~~[from]~~ that customer until the customer represents to the licensee in writing that the customer qualifies to enter into~~[issue]~~ a new deferred deposit transaction under the requirements set forth in this subtitle~~[section]~~.

(d) If the database described in Section 8 of this Act is unavailable due to

technical difficulties with the database, as determined by the executive director, the licensee shall utilize the process established in this subsection to verify deferred deposit transactions.

~~(11)~~~~(12)~~ A licensee shall not use any device or agreement, including agreements with an affiliate of a licensee~~[affiliated licensees]~~, with the intent to obtain greater charges than are authorized in this subtitle~~[section]~~.

~~(12)~~~~(13)~~ No licensee shall agree to hold a deferred deposit transaction for more than sixty (60) days.

~~(13)~~~~(14)~~ Each deferred deposit transaction shall be made according to a written agreement that shall be dated and signed by the customer and the licensee or an authorized agent of the licensee at the licensed location, and made available to the executive director~~[office]~~ upon request. The customer shall receive a copy of this agreement.

~~(14)~~~~(15)~~ A licensee or its affiliate shall not for a fee renew, roll over, or otherwise consolidate a deferred deposit transaction for a customer.

~~(15)~~~~(16)~~ No individual who enters into a deferred deposit transaction with a licensee shall be convicted under the provisions of KRS 514.040.

~~(16)~~~~(17)~~ No licensee who enters into a deferred deposit transaction with an individual shall prosecute or threaten to prosecute an individual under the provisions of KRS 514.040.

~~(17)~~~~(18)~~ Each licensee shall conspicuously display in each of its~~[every]~~ deferred deposit business locations~~[location]~~ a sign supplied by the executive director that gives the following notice: "No person who enters into a post-dated~~[check]~~ or deferred deposit~~[check]~~ transaction with this business establishment will be prosecuted for or convicted of writing cold checks or of theft by deception under the provisions of KRS 514.040.

(18) A licensee may not enter into a deferred deposit transaction with a customer who

1 has two (2) open deferred deposit transactions.

2 (19) A licensee shall verify a customer's eligibility to enter into a deferred presentment  
 3 service transaction by doing one (1) of the following, as applicable:

4 (a) If the executive director has not implemented a database under Section 8 of  
 5 this Act or the database described in Section 8 of this Act is not fully  
 6 operational, as determined by the executive director, the licensee shall verify  
 7 that the customer meets the eligibility requirements for a deferred  
 8 presentment service transaction under this subtitle. The licensee shall  
 9 maintain a database of all of the licensee's transactions at all of its  
 10 locations and search that database to meet its obligation under this subtitle.

11 (b) If the executive director has implemented a database under Section 8 of this  
 12 Act and the database described in that section is fully operational, as  
 13 determined by the executive director, the licensee shall promptly and  
 14 accurately access the database through an Internet real-time connection,  
 15 and verify that the customer meets the eligibility requirements for a deferred  
 16 presentment service transaction under this subtitle.

17 ➔ Section 5. KRS 286.9-110 is amended to read as follows:

18 (1) The executive director may suspend, ~~or~~ revoke, place on probation, condition,  
 19 restrict, refuse to issue or renew a license, accept the surrender of a license in  
 20 lieu of revocation or suspension, order that refunds to customers be made, or  
 21 issue a cease-and-desist order, if the executive director finds that the person,  
 22 licensee, or a person in control of a licensee ~~[license on any ground on which he~~  
 23 ~~may refuse to grant a license or for violation of any provision of KRS 286.9-010 to~~  
 24 ~~286.9-120 or if the licensee]~~:

25 (a) Has committed any fraud, engaged in any dishonest activities, or made any  
 26 misrepresentation;

27 (b) Does not meet, has failed to comply with, or has violated any provisions of

- 1        ~~this subtitle~~<sup>[KRS 286.9-010 to 286.9-120]</sup> or any administrative regulation  
 2        issued pursuant thereto, or any order of the executive director issued  
 3        pursuant thereto, or has violated any other law in the course of its or his or  
 4        her dealings as a licensee;
- 5        (c) Has made a false statement in the application for the license or failed to give a  
 6        truthful<sup>[true]</sup> reply to a question in the application;~~[-or]~~
- 7        (d) Has demonstrated his or her incompetence<sup>[its incompetency]</sup> or  
 8        untrustworthiness to act as a licensee;
- 9        (e) Is unfit, through lack of financial responsibility or experience, to conduct  
 10        the business of a check-cashing or deferred deposit service business, as the  
 11        case may be;
- 12        (f) Does not conduct his or her business in accordance with the law or  
 13        conducts business by a method that includes, or would include, activities  
 14        that are illegal where performed, or has willfully violated any provision of  
 15        this subtitle; or any administrative regulation promulgated or order of the  
 16        executive director issued hereunder;
- 17        (g) Is insolvent;
- 18        (h) Is the subject of an administrative cease-and-desist order or similar order,  
 19        or a permanent or temporary injunction of any court of competent  
 20        jurisdiction entered under any other federal or state act applicable to the  
 21        person, applicant, or licensee;
- 22        (i) Has made or caused to be made to the executive director any false  
 23        representation of material fact or has suppressed or withheld from the  
 24        executive director any information that the applicant or licensee possesses  
 25        and which, if submitted by him or her, would have rendered the applicant or  
 26        licensee ineligible to be licensed under this subtitle;
- 27        (j) Has refused to permit an examination or investigation by the executive

director of his or her books and affairs or has refused or failed, within a reasonable time, to furnish any information or records, or make any report that may be required or requested by the executive director;

(k) Has been convicted of a felony;

(l) Has been convicted of any misdemeanor of which an essential element is fraud, breach of trust, or dishonesty;

(m) Has had any license, registration, or claim of exemption related to the financial services industry denied, revoked, suspended, conditioned, restricted, or probated under the laws of this state, any other state, or the United States, or has surrendered, withdrawn, or terminated any license, registration, or claim of exemption issued or registration granted by this state or any other jurisdiction under threat of administrative action;

(n) Has employed or contracted with a person who has failed to license or has had a license, registration, or claim of exemption denied, revoked, suspended, conditioned, restricted, or probated in this Commonwealth or another state;

(o) Has failed to pay any required fee under this subtitle;

(p) Has abandoned an application or renewal application by failing to provide the executive director any information required under this subtitle, or requested by the executive director, to complete an application;

(q) Has failed to comply with an administrative or court order imposing child support obligations;

(r) Has failed to pay state income taxes or to comply with any administrative or court order directing the payment of state income tax;

(s) Has failed to properly verify a customer's eligibility for a deferred deposit transaction;

(t) Has applied for an adjudication of bankruptcy, reorganization,

arrangement, or other relief under the United States Bankruptcy Code, 11 U.S.C. secs. 101 to 110;

(u) Has suspended payment of its obligations or has made an assignment for the benefit of its creditors;

(v) Has violated any of the recordkeeping and reporting requirements of the United States government including 31 U.S.C. secs. 5311 to 5332 and 31 C.F.R. pt. 103; or

(w) No longer meets the requirements under this subtitle to hold a license.

(2) If the reason for revocation,~~or~~ suspension, restriction, condition, or probation of a licensee's license at any one location is of general application to all locations operated by a licensee, the executive director may revoke,~~or~~ suspend, restrict, condition, or probate all licenses issued to a licensee.

(3) Any person who has had a license denied by the executive director shall not be eligible to apply for a license under this subtitle until after expiration of one (1) year from the date of denial.

(4) Any person who has had a license revoked by the executive director shall not be eligible to apply for a license under this subtitle until after expiration of three (3) years from the date of revocation. A person whose license has been revoked twice shall be deemed permanently revoked and shall not again be eligible for a license under this subtitle.

(5) Any person whose license has been denied, suspended, revoked, or surrendered in lieu of revocation or suspension under this section is prohibited from participating in any business activity of a licensee under this subtitle and from engaging in any business activity on the premises where a licensee under this subtitle is conducting its business.

(6) The surrender or expiration of a license shall not affect the person's civil or criminal liability for acts committed prior to the license surrender or expiration.

Revocation, suspension, refusal to renew, surrender, or expiration of a license shall not impair or affect the obligation of any preexisting contract between a licensee and a customer. The surrender or expiration of a license shall not affect a proceeding to suspend or revoke a license.

(7) The executive director may notify the Department of Revenue, which may institute an action in the name of the Commonwealth of Kentucky, in the Franklin Circuit Court, or any court of competent jurisdiction, for the recovery of any civil penalty, fine, cost, or fee assessed or levied under this subtitle.

(8) The executive director may file a complaint in the Franklin Circuit Court, or any court of competent jurisdiction, for a temporary restraining order or injunction against any person, where the executive director has reason to believe from evidence satisfactory to the executive director that such person has violated, or is about to violate, a provision in this subtitle, for the purpose of restraining and enjoining such person from continuing or engaging in the violation or doing any act in furtherance thereof. The court shall have jurisdiction over the proceeding and shall have the power to enter an order or judgment awarding preliminary or final injunctive relief and any other relief that the court deems proper. Any person who violates a temporary restraining order or injunction issued by the court entered as a result of a violation of this subtitle shall be held in contempt of court and the court may assess a civil penalty in an amount equivalent to the amounts found in Section 9 of this Act.

➔ Section 6. KRS 286.9-040 is amended to read as follows:

To qualify for a license, an applicant shall satisfy the following requirements:

(1) The applicant shall deposit with the executive director one (1) of the following instruments:

(a) An irrevocable letter of credit in the following amounts:

1. If an applicant has only one (1) business location, the amount shall be

fifty thousand dollars (\$50,000);

2. If an applicant has two (2) to five (5) business locations, the amount shall be one hundred thousand dollars (\$100,000);

3. If an applicant has six (6) to ten (10) business locations, the amount shall be one hundred fifty thousand dollars (\$150,000);~~and~~

4. If an applicant has eleven (11) to twenty (20)~~more than ten (10)~~ business locations, the amount shall be two hundred thousand dollars (\$200,000);

5. If an applicant has twenty-one (21) to thirty (30) business locations, the amount shall be three hundred thousand dollars (\$300,000);

6. If an applicant has thirty-one (31) to forty (40) business locations, the amount shall be four hundred thousand dollars (\$400,000); and

7. If an applicant has more than forty (40) business locations, the amount shall be five hundred thousand dollars (\$500,000);

(b) A corporate surety bond made payable to the executive director in the same amount that is required in paragraph (1)(a) of this section;

(c) Evidence that the applicant has established an account payable to the executive director in a federally insured financial institution in this state and has deposited~~deposit~~ money of the United States in an amount equal to the amount of the required letter of credit; or

~~(d)~~~~(e)~~ A savings certificate of a federally insured financial institution in this state for an amount payable that is equal to the amount of the required letter of credit and that is not available for withdrawal except by direct order of the executive director. Interest earned on the certificate accrues to the applicant.

(2) Every instrument required in this section shall provide for suit thereon by any person who has a cause of action under this subtitle. The total liability of the surety, to all persons, cumulative or otherwise, shall not exceed the amount



1 specified in the bond.

2 (3) Every instrument required in this section shall be made payable to the executive  
 3 director.

4 (4) Every instrument required in this section shall be available for the recovery of  
 5 expenses, fines, and fees levied by the executive director under this subtitle, and  
 6 for losses or damages that are determined by the executive director to have been  
 7 incurred by any customer as a result of the applicant's or licensee's failure to  
 8 comply with the requirements of this subtitle.

9 (5) Every instrument required in this section shall provide that no suit shall be  
 10 maintained to enforce any liability on the bond unless brought within three (3)  
 11 years after the act upon which it is based.

12 (6) The financial responsibility, financial condition, business experience, character, and  
 13 general fitness of the applicant shall reasonably warrant the belief that the  
 14 applicant's business will be conducted honestly, carefully, and efficiently. In  
 15 determining whether this qualification has been met, the executive director may  
 16 review and approve:

- 17 (a) The business record and the capital adequacy of the applicant;  
 18 (b) The competence, experience, integrity, and financial ability of any person  
 19 who:

- 20 1. Is a director, officer, supervisory employee, or five percent (5%) or more  
 21 shareholder of the applicant; or  
 22 2. Owns or controls the applicant; and

- 23 (c) Any record, on the part of the applicant or any person referred to in  
 24 subparagraph (b)1. and 2. of:

- 25 1. Any criminal activity;  
 26 2. Any fraud or other act of personal dishonesty;  
 27 3. Any act, omission, or practice which constitutes a breach of a fiduciary

duty; or

4. Any suspension, revocation, or removal, by any agency or department of the United States or any state, from participation in the conduct of any business.

➔SECTION 7. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

(1) Any deferred deposit transaction agreement made with a person who is not licensed under this subtitle shall be void, and the person shall not collect any principal, fee, interest, charges, or recompense whatsoever.

(2) The executive director may void a deferred deposit transaction agreement when it is determined by the executive director that the licensee has violated any provision of this subtitle. The licensee shall be allowed to recover from the customer any principal paid by the licensee to the customer, but the licensee shall not recover any service fee or other charge related to the deferred deposit transaction.

(3) For purposes of this section, "payment instrument" also includes debit authorization, electronic funds transfer, and any other form of electronic transmission of money.

➔SECTION 8. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

(1) The executive director shall, on or before July 1, 2010, implement a common database with real-time access through an Internet connection for deferred deposit service business licensees as provided in this subtitle unless implementing the database by that date would be financially impracticable for the executive director to design and operate a database or because a contract with a qualified third party provider has not been entered into. The database shall be accessible to the office and the deferred deposit service business licensee to verify whether any

deferred deposit transactions are outstanding for a particular person. A deferred deposit service business licensee shall accurately and promptly submit such data before entering into each deferred deposit transaction in such format as the executive director may require by rule or order, including the customer's name, social security number or employment authorization alien number, address, driver's license number, amount of the transaction, date of transaction, date that the completed transaction is closed, and any additional information required by the executive director. The executive director may adopt rules to administer and enforce the provisions of this subtitle and to assure that the database is used by deferred deposit service business licensees in accordance with this subtitle.

(2) The executive director shall impose a fee of one dollar (\$1) per transaction for data required to be submitted by a deferred deposit service business licensee, which fee may be charged to the customer.

(3) The executive director may operate the database described in subsection (1) of this section or may select and contract with a third-party provider to operate the database. If the executive director contracts with a third-party provider for the operation of the database, all of the following apply:

(a) The executive director shall ensure that the third-party provider selected as the database provider operates the database pursuant to the provisions of this subtitle;

(b) The executive director shall consider cost of service and ability to meet all the requirements of this subtitle in selecting a third-party provider as the database provider;

(c) In selecting a third-party provider to act as the database provider, the executive director shall give strong consideration to the third-party provider's ability to prevent fraud, abuse, and other unlawful activities associated with deferred presentment service transactions and provide

additional tools for the administration and enforcement of this subtitle;

(d) The third-party provider shall use the data collected under this subtitle as only prescribed in this subtitle and the contract with the office and for no other purpose;

(e) If the third-party provider violates this subtitle, the executive director may terminate the contract and the third-party provider may be barred from becoming a party to any other state contracts;

(f) A person injured by the third-party provider's violation of this subtitle may maintain a civil cause of action against the third-party provider and may recover actual damages plus reasonable attorney's fees and court costs; and

(g) The executive director may require that the third-party provider collect the fee assessed in subsection (2) of this section from the licensee. The third-party provider shall remit the fee collected from the licensee to the executive director no later than the first day of each month. The third-party provider shall deposit any fee collected in a separate escrow account in a federally insured financial institution and shall hold the fee deposited in trust for the Commonwealth of Kentucky.

(4) The database described in subsection (1) of this section shall allow a deferred deposit service business licensee accessing the database to do all of the following:

(a) Verify whether a customer has any open deferred deposit transactions with any deferred deposit business service licensee that have not been closed;

(b) Provide information necessary to ensure deferred deposit service business licensee compliance with any requirements imposed by the United States Treasury Office of Foreign Assets Control and United States Treasury Office of Financial Crimes Enforcement Network; and

(c) Track and monitor the number of customers who notify a deferred deposit service business licensee of violations of this subtitle, the number of times a

deferred deposit service business licensee agreed that a violation occurred, the number of times that a deferred deposit service business licensee did not agree that a violation occurred, the amount of restitution paid, and any other information the executive director requires by rule or order.

(5) While operating the database, the database provider shall do all of the following:

(a) Establish and maintain a process for responding to transaction verification requests due to technical difficulties occurring with the database that prevent the licensee from accessing the database through the Internet;

(b) Comply with any applicable federal and state provisions to prevent identity theft;

(c) Provide accurate and secure receipt, transmission, and storage of customer data; and

(d) Meet the requirements of this subtitle.

(6) When the database provider receives notification that a deferred deposit service transaction has been closed, the database provider shall designate the transaction as closed in the database immediately, but in no event after 11:59 p.m. on the day the executive director or database provider receives notification.

(7) The database provider shall automatically designate a deferred deposit service transaction as closed in the database five (5) days after the transaction maturity date unless a deferred deposit service business licensee reports to the database provider before that time that the transaction remains open because of the customer's failure to make payment; that the transaction is open because the customer's payment instrument or an electronic redeposit is in the process of clearing the banking system; or that the transaction remains open because the customer's payment instrument is being returned to the deferred deposit service business licensee for insufficient funds, a closed account, or a stop payment order; or because of any other factors determined by the executive director. If a

1 deferred deposit service business licensee reports the status of a transaction as  
2 open in a timely manner, the transaction remains an open transaction until it is  
3 closed and the database provider is notified that the transaction is closed.

4 (8) If a deferred deposit service business licensee stops providing deferred deposit  
5 service transactions, the database provider shall designate all open transactions  
6 with that licensee as closed in the database sixty (60) days after the date the  
7 deferred deposit service business licensee stops offering deferred deposit service  
8 transactions, unless the deferred deposit service business licensee reports to the  
9 database provider before the expiration of the sixty (60) day period which of its  
10 transactions remain open and the specific reason each transaction remains open.  
11 The deferred deposit service business licensee shall also provide to the executive  
12 director a reasonably acceptable plan that outlines how the deferred deposit  
13 service business licensee will continue to update the database after it stops  
14 offering deferred presentment service transactions. The executive director shall  
15 promptly approve or disapprove the plan and immediately notify the deferred  
16 deposit service business licensee of the executive director's decision. If the plan is  
17 disapproved, the deferred deposit service business licensee may submit a new plan  
18 or may submit a modified plan for the deferred deposit service business licensee  
19 to follow. If at any time the executive director reasonably determines that a  
20 deferred deposit service business licensee that has stopped offering deferred  
21 deposit service transactions is not updating the database in accordance with its  
22 approved plan, the executive director shall immediately close or instruct the  
23 database provider to immediately close all remaining open transactions of that  
24 deferred deposit service business licensee.

25 (9) The response to an inquiry to the database provider by a deferred deposit service  
26 business licensee shall state only that a person is eligible or ineligible for a new  
27 deferred deposit service transaction and describe the reason for that

determination. Only the person seeking the transaction may make a direct inquiry to the database provider to request a more detailed explanation of a particular transaction that was the basis for the ineligibility determination. Any information regarding any person's transaction history is confidential; is not subject to public inspection; is not a public record subject to the disclosure requirements of the Kentucky Open Records Act, KRS 61.870 to 61.884; is not subject to discovery, subpoena, or other compulsory process, except in an administrative or legal action arising under this subtitle; and shall not be disclosed to any person other than the executive director.

(10) The executive director may access the database provided under subsection (1) of this section only for purposes of an investigation of, examination of, or enforcement action concerning an individual database provider, licensee, customer, or other person.

(11) The executive director shall investigate violations of and enforce this subtitle. The executive director shall not delegate his or her responsibilities under this subsection to any third-party provider.

(12) (a) The executive director shall make a determination that the database is fully operational and shall send written notification to each licensee subject to the provisions of this subtitle:

1. That the database has been implemented; and

2. Of the exact date that the database shall be considered operational for the data entry requirement established in paragraph (b) of this subsection.

(b) A deferred deposit service business licensee shall promptly and accurately enter into the database all transactions undertaken by the licensee upon receipt of the written notification established in paragraph (a) of this subsection.

1 (13) The executive director may, by rule or order, do all of the following:

2 (a) Require that data be retained in the database only as required to ensure  
 3 deferred deposit service business licensee compliance with this subtitle;

4 (b) Require that customer transaction data in the database are archived within  
 5 three hundred sixty-five (365) days after the customer transaction is closed  
 6 unless needed for a pending enforcement or legal action;

7 (c) Require that any identifying customer information is deleted from the  
 8 database when data are archived; and

9 (d) Require that data in the database concerning a customer transaction are  
 10 deleted from the database three (3) years after the customer transaction is  
 11 closed or, if any administrative, legal, or law enforcement action is pending,  
 12 three (3) years after the administrative, legal, or law enforcement action is  
 13 completed, whichever is later.

14 (14) The executive director may maintain access to data archived under subsection  
 15 (13) of this section for examination, investigation, or legislative or policy review.

16 (15) A deferred deposit service business licensee may rely on the information  
 17 contained in the database as accurate and is not subject to any administrative  
 18 penalty or civil liability as a result of relying on inaccurate information contained  
 19 in the database, provided the deferred deposit licensee accurately and promptly  
 20 submits such data as required before entering into a deferred deposit transaction  
 21 with a customer.

22 (16) The executive director may use the database to administer and enforce this  
 23 subtitle.

24 (17) The executive director may require a database provider to file a report by March  
 25 1 of each year containing the following information:

26 (a) The total number and dollar amount of deferred deposit transactions  
 27 entered into in the calendar year ending December 31 of the previous year;



(b) The total number and dollar amount of deferred deposit transactions outstanding as of December 31 of the previous year;

(c) The total dollar amount of fees collected for deferred deposit transactions as of December 31 of the previous year;

(d) The minimum, maximum, and average dollar amount of deferred deposit transactions entered into, the total dollar amount of the net charge-offs and write-offs, and the net recoveries of licensees as of December 31 of the previous year;

(e) The average deferred deposit transaction amount, the average number of transactions, and the average aggregate deferred deposit transaction amount entered into per customer as of December 31 of the previous year;

(f) The average number of days a customer was engaged in a deferred deposit transactions for the previous year; and

(g) An estimate of the average total fees paid per customer for deferred deposit transactions for the previous year.

(18) Enforcement of this section shall be effective ninety (90) days after the database implementation date established by the executive director as set forth in subsection (12) of this section.

➔SECTION 9. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

(1) The executive director may levy a civil penalty against a person who violates any provision of, or administrative regulation promulgated under, this subtitle or any order issued by the executive director under this subtitle.

(2) The civil penalty shall be not less than one thousand dollars (\$1,000) or more than five thousand dollars (\$5,000) per violation for each day the violation is outstanding, plus the state's costs and expenses for the examination, investigation, and prosecution of this matter, including reasonable attorney's fees

1 and court costs.

2 (3) Any civil penalties imposed may be in addition to any other remedy or penalty  
 3 imposed in this subtitle.

4 ➔SECTION 10. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 286  
 5 IS CREATED TO READ AS FOLLOWS:

6 (1) The executive director may enter into a consent order with another person at any  
 7 time for the purpose of resolving a matter arising under this subtitle. A consent  
 8 order shall be signed by the person to whom it is issued or by the person's  
 9 authorized representative and shall indicate agreement with the terms contained  
 10 in the order. A consent order may provide that it does not constitute an admission  
 11 by a person that this subtitle, or an administrative regulation promulgated under  
 12 this subtitle, or an order issued under this subtitle has been violated.

13 (2) Any consent order that the executive director enters into to resolve a matter  
 14 arising under this subtitle shall be deemed an administrative action and a public  
 15 record.

16 ➔SECTION 11. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 286  
 17 IS CREATED TO READ AS FOLLOWS:

18 The executive director may stay, suspend, or postpone the effective date of an order  
 19 issued under this subtitle, pending the administrative proceeding and the issuance of a  
 20 final order resulting from the proceeding, upon written request by the affected person  
 21 or licensee.

22 ➔SECTION 12. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 286  
 23 IS CREATED TO READ AS FOLLOWS:

24 In addition to the requirements contained in this subtitle, every licensee shall comply  
 25 with all applicable federal and state laws.

26 ➔SECTION 13. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 286  
 27 IS CREATED TO READ AS FOLLOWS:

1 (1) Every licensee required to register with the United States Treasury Financial  
 2 Crimes Enforcement Network shall file with the executive director all reports by  
 3 federal currency reporting, recordkeeping, and suspicious transaction reporting  
 4 requirements as set forth in the Bank Secrecy Act, 31 U.S.C. secs. 5311 to 5332,  
 5 31 C.F.R. pt. 103, and other federal and state laws pertaining to money  
 6 laundering, for every transaction in this state. Every licensee required to register  
 7 with the United States Treasury Financial Crimes Enforcement Network shall  
 8 maintain copies of these reports in its records in compliance with Section 15 of  
 9 this Act, or for a time period longer than allowed by Section 15 of this Act, where  
 10 federal law prescribes.

11 (2) The timely filing with the appropriate federal agency of a complete and accurate  
 12 report required under subsection (1) of this section is deemed to be in compliance  
 13 with the requirements of subsection (1) of this section, unless the executive  
 14 director notifies the licensee that reports of the type required in subsection (1) of  
 15 this section are not being regularly and comprehensively transmitted to the  
 16 federal agency.

17 ➔SECTION 14. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 286  
 18 IS CREATED TO READ AS FOLLOWS:

19 Every person licensed under this subtitle shall maintain an agent in this  
 20 Commonwealth for service of process. The name, address, telephone number, and  
 21 electronic mail address of the agent shall be filed with the application. The executive  
 22 director shall be notified in writing by the licensee at least five (5) days prior to any  
 23 change in the status of an agent.

24 ➔SECTION 15. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 286  
 25 IS CREATED TO READ AS FOLLOWS:

26 (1) Each licensee shall keep and use in its business any books, accounts, financial  
 27 reports, and records the executive director may require to administer and regulate

the provisions of this subtitle and the administrative regulations promulgated under this subtitle. Every licensee shall preserve the books, accounts, financial reports, and records for a minimum of three (3) years, unless applicable state or federal law requires a longer retention period.

(2) Records required to be preserved under this section may be maintained in an electronic retrievable format, or other similar form of medium, provided that it is readily accessible to examination, investigation, and inspection by the executive director.

(3) Any person who ceases operating a business licensed under this subtitle shall, at least thirty (30) days prior to the discontinuance of the business, notify the executive director in writing of the physical location where the records required to be kept under this subtitle will be preserved or archived. The records shall be made accessible to the executive director upon five (5) business days' written notice.

(4) Any person who ceases operating as a business licensed under this subtitle shall designate a custodian of records and notify the executive director of the name, physical address, electronic mail address, and telephone number of the custodian of records. The custodian of records shall preserve all records required under this subtitle and allow the executive director access to the records for examination and investigation upon demand.

(5) The executive director may approve a written request for the destruction of records required to be preserved under this subtitle prior to the minimum retention period described in subsection (1) of this section.

→SECTION 16. A NEW SECTION OF KRS CHAPTER 286 IS CREATED TO  
READ AS FOLLOWS:

(1) The executive director may enter an emergency order suspending, conditioning, limiting, or restricting a license issued under this subtitle without notice or

hearing if it appears upon grounds satisfactory to the executive director that the licensee has engaged or is engaging in unsafe, unsound, or illegal practices that pose an imminent threat to the public interest.

(2) One (1) or more of the following circumstances shall be considered sufficient grounds for an emergency order under this section if it appears on grounds satisfactory to the executive director that:

(a) The licensee does not meet or has failed to comply with more than one (1) of the requirements of this subtitle and the violations appear to be willful;

(b) The licensee is in such financial condition that it cannot continue in business with safety to its customers;

(c) The licensee has been indicted, charged with, or found guilty of any act involving fraud, deception, theft, or breach of trust, or is the subject of an administrative cease-and-desist order or similar order, or of a permanent or temporary injunction currently in effect entered by any court or agency of competent jurisdiction;

(d) The licensee has made any misrepresentations or false statements to, or concealed any essential or material fact from, any person in the course of doing business, or has engaged in any course of business that has worked or tended to work a fraud or deceit upon any person or would so operate;

(e) The licensee has refused to permit an examination, or has refused or failed, within a reasonable time, to furnish any information or make any report that may have been requested or required by the executive director in connection with an investigation or examination;

(f) The licensee has had any license, registration, or claim of exemption related to the financial services industry denied, suspended, or revoked under the laws of this state or any other state of the United States, or has surrendered or terminated any license, registration, or claim of exemption issued by this

- 1           state or any other jurisdiction under threat of administrative action; or  
 2           (g) The deposit required under Section 6(1) of this Act has terminated, expired,  
 3           or otherwise no longer remains in effect.
- 4           (3) An emergency order issued under this section becomes effective when signed by  
 5           the executive director. The emergency order shall be delivered by personal  
 6           delivery or certified mail to the last known address of the person. The order shall  
 7           be deemed served upon delivery or upon return of the order.
- 8           (4) A party aggrieved by an emergency order issued by the executive director under  
 9           this section may request an emergency hearing. The request for hearing shall be  
 10           filed with the executive director within twenty (20) days of service of the  
 11           emergency order.
- 12           (5) Upon receipt of a written request for an emergency hearing, the executive  
 13           director shall conduct an emergency hearing as required under KRS 13B.125,  
 14           within ten (10) working days from the date of receipt of the request for hearing,  
 15           unless the parties agree otherwise.
- 16           (6) An emergency order issued under this section shall remain in effect until it is  
 17           stayed, withdrawn, or superseded by an order of the executive director or until it  
 18           is terminated by a court order.

19           ➔Section 17. KRS 286.9-104 is amended to read as follows:

- 20           (1) Each licensee shall file an annual report with the executive director by  
 21           March~~September~~ 1 of each year, containing the following information:
- 22           (a) The names and addresses of each person owning a controlling interest in each  
 23           license;
- 24           (b) The location of all places of business operated by the licensee and the nature  
 25           of the business conducted at each location;
- 26           (c) The names and addresses of all affiliated entities regulated under this  
 27           subtitle~~[KRS 286.9-010 to 286.9-120]~~ and doing business in this state;

1 (d) Balance sheets, statement of income and expenses, and other statistical  
 2 information as may be reasonably required by the executive director,  
 3 consistent with generally accepted accounting practices, for the purpose of  
 4 determining the general results of operations under this subtitle; and

5 (e) If the licensee is a corporation, the names and addressees of its  
 6 principal~~principle~~ officers and directors;<sup>[,]</sup> or if the licensee is a partnership,  
 7 the names and addresses of the partners;<sup>[,]</sup> or if the licensee is a limited  
 8 liability company, the names and addresses of the board of directors of the  
 9 limited liability company.

10 (2) If the licensee holds two (2) or more licenses or is affiliated with other licensees, a  
 11 composite report may be filed.

12 (3) All reports shall be filed in a form as may reasonably be required by the executive  
 13 director and shall be sworn to by a responsible officer of the licensee.

14 (4) The information submitted by licensees under this section shall be held in  
 15 confidence by the office and the executive director.

16 ➔ Section 18. KRS 286.9-120 is amended to read as follows:

17 (1) The executive director may file an administrative complaint against any person if  
 18 it appears on grounds satisfactory to the executive director that a potential or  
 19 actual violation of this subtitle has been committed and when the person may be  
 20 subject to the penalties of Sections 5, 9 and 23 of this Act. The executive director  
 21 shall serve the administrative complaint to the last known address of the person  
 22 named in the complaint. Service shall be by certified mail or personal delivery.  
 23 The person named in the administrative complaint shall be entitled to an  
 24 administrative hearing conducted in accordance with KRS Chapter 13B but only  
 25 upon timely receipt of a written answer and request for an administrative hearing  
 26 within twenty (20) days of the mailing or hand delivery of the administrative  
 27 complaint. If timely requested, an administrative hearing shall be held in

accordance with the provisions of KRS Chapter 13B. If an answer is not timely filed, or a written request for a hearing is not timely filed, the executive director may enter a final order.

(2) No license shall be denied, limited, conditioned, restricted, probated, suspended, or revoked unless the applicant or licensee is afforded the opportunity for a hearing to be conducted in accordance with KRS Chapter 13B.

➔Section 19. KRS 286.9-090 is amended to read as follows:

(1) The executive director~~[office]~~ may adopt reasonable administrative regulations, not inconsistent with law, for the enforcement of this subtitle~~[KRS 286.9-010 to 286.9-120]~~.

(2) To assure compliance with the provisions of this subtitle~~[KRS 286.9-010 to 286.9-120]~~, the executive director~~[office]~~ may examine the business, books, and records of any licensee, and each licensee shall pay an examination fee sufficient to cover the cost of the examination based upon fair compensation for time and actual expense as established by order or administrative regulations~~[of the office]~~.

(3) The affairs of every check cashing and deferred deposit service business licensee and the records required to be maintained by Section 15 of this Act are subject at any time, or from time to time, to such periodic, special, or other examinations by the executive director or an examiner of the executive director within or without this state and with or without notice to the licensee, as the executive director deems necessary or appropriate in the public interest. All books, papers, and records of assets of the licensee shall be subject to the executive director's inspection.

(4) Reports of examination, related working papers, or other confidential information in the possession or control of the executive director that is provided according to this subtitle shall be confidential by law and privileged, and shall not be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884. These



reports of examination, related working papers, or other confidential information shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any civil action, unless after notice to the executive director and a hearing, a court of competent jurisdiction determines that the executive director would not be prejudiced. However, the executive director may use such reports, working papers, and other confidential information in the furtherance of any regulatory or legal action brought as a part of the executive director's official duties.

(5) Neither the executive director nor any person who received documents, materials, reports, or other information while acting under the authority of the executive director shall be required to testify in any civil action concerning any reports of examination, related working papers, or other confidential information subject to subsection (4) of this section.

(6) In order to assist in the performance of the executive director's duties, the executive director may:

(a) Share documents, materials, annual reports, reports of examination or other information, including the confidential and privileged documents, materials, reports, or information subject to subsections (4) and (5) of this section, with other state, federal, and international regulatory agencies, and with local, state, federal, and international law enforcement authorities, if the recipient agrees to maintain the confidentiality and privileged status of the documents, materials, reports, or other information;

(b) Receive documents, materials, reports, or other information, including otherwise confidential and privileged documents, materials, reports, or information from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential and privileged any documents, materials, reports, or information received with notice or

the understanding that they are confidential and privileged under the laws of the jurisdiction that is the source of the documents, materials, reports, or information;

(c) Enter into agreements governing the sharing and use of information, including the furtherance of any regulatory or legal action brought as part of the recipient's official duties;

(d) Disclose to the public a list of persons licensed under this subtitle or the aggregate financial data concerning those licensees; and

(e) Disclose to the public any order issued under this subtitle that is the result of an administrative or legal action against a licensee, agent of a licensee, responsible individual, key shareholder, executive officer, or director.

(7) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, reports, or information shall occur as a result of disclosure to the executive director under this subsection or as a result of sharing as authorized in subsection (6) of this section.

➔Section 20. KRS 286.9-075 is amended to read as follows:

(1) Any person aggrieved by the conduct of a licensee under this subtitle~~[KRS 286.9-010 to 286.9-120]~~ in connection with the licensee's regulated activities may file a written complaint with the executive director who may investigate the complaint.

(2) In the course of the investigation initiated by a complaint or by the executive director, the executive director may:

(a) Subpoena witnesses;

(b) Administer oaths;

(c) Examine any individual under oath; and

(d) Compel the production of records, books, papers, contracts, or other documents relevant to the investigation.

(3) If any person fails to testify or to comply with a subpoena from the executive

1 director under this section, the executive director may petition any court of  
2 competent jurisdiction for enforcement.

3 (4) The license of any licensee under this subtitle~~[KRS 286.9-010 to 286.9-120]~~ who  
4 fails to comply with a subpoena of the executive director may be suspended pending  
5 compliance with the subpoena.

6 (5) The executive director shall have administrative power to investigate all complaints  
7 filed by any person if the complaints are not criminal in nature and if they relate to  
8 the check cashing or the deferred deposit service business.

9 ➔Section 21. KRS 286.9-030 is amended to read as follows:

10 The provisions of this subtitle~~[KRS 286.9-010 to 286.9-120]~~ shall not apply to:

11 (1) Any bank, trust company, savings and loan association, savings bank, credit union,  
12 consumer loan company, or industrial loan corporation which is chartered, licensed,  
13 or organized under the laws of this Commonwealth or under federal law and  
14 authorized to do business in this Commonwealth;

15 (2) Any person who cashes checks without receiving, directly or indirectly, any  
16 consideration or fee therefor;~~[and]~~

17 (3) Any person principally engaged in the retail sale of goods or services who, either as  
18 an incident to or independently of a retail sale, may from time to time cash checks  
19 for a fee or other consideration.

20 **(4) The United States and any department, agency, or instrumentality thereof; and**

21 **(5) A state or any agency, department, or political subdivision of a state.**

22 ➔Section 22. KRS 286.9-102 is amended to read as follows:

23 (1) Each licensee who engages in deferred deposit transactions shall give the customer  
24 the disclosures in writing required by the Consumer Credit Protection Act (15  
25 U.S.C. sec. 1601). Proof of this disclosure shall be made available to the executive  
26 director~~[office]~~ upon request.

27 (2) Each licensee shall conspicuously display a schedule of all fees, and charges for all

services provided by the licensee that are authorized by this subtitle~~[KRS 286.9-010 to 286.9-120]~~. The notice shall be posted at each location where a licensee conducts its business under this subtitle~~[the office and every branch office of the licensee]~~.

(3) A licensee may charge, collect, and receive check collection charges made by a financial institution for each check returned or dishonored for any reason, provided that the terms and conditions upon which check collection charges will be charged to the customer are set forth in advance in the written disclosure.

(4) Any personal check accepted from a customer must be payable to the licensee.

(5) Before a licensee shall present for payment or deposit a check accepted by the licensee, the check shall be endorsed with the actual name under which the licensee is doing business.

➔SECTION 23. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

The executive director shall not issue additional deferred deposit service business licenses for a period of ten (10) years after July 1, 2009.

➔Section 24. KRS 286.9-990 is amended to read as follows:

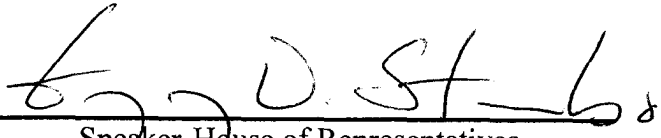
(1) Any person who intentionally violates any provision of this subtitle, or violates any administrative regulation promulgated hereunder, or violates any order of the executive director, shall be guilty of a Class A misdemeanor. Each transaction in violation of this subtitle and each day that a violation continues shall constitute a separate offense.

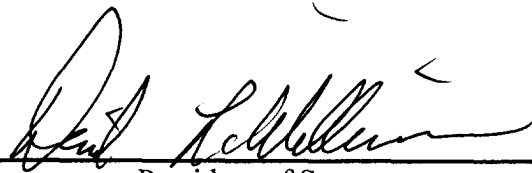
(2) This section shall not be deemed to limit the power of the executive director to enforce any of the administrative penalties found in this subtitle.

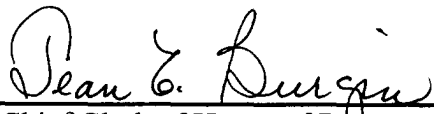
(3) For purposes of this section, "payment instrument" also includes debit authorization, electronic funds transfer, and any other form of electronic transmission of money~~[directly or through another violates or attempts to violate~~

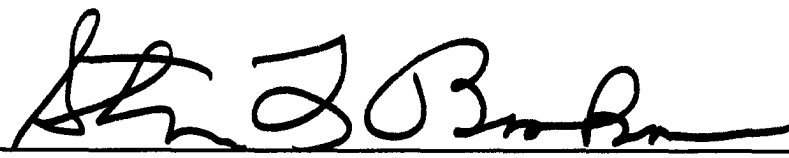
1     ~~any provision of KRS 286.9-010 to 286.9-120 shall be guilty of a misdemeanor, and~~  
2     ~~shall be fined not less than one hundred dollars (\$100) nor more than five hundred~~  
3     ~~dollars (\$500) or imprisoned in the county jail for not more than twelve (12)~~  
4     ~~months, or both. Each transaction in violation of KRS 286.9-010 to 286.9-120 and~~  
5     ~~each day that a violation continues shall be a separate offense].~~

6     ➔Section 25. Sections 1 through 7 and Sections 9 through 24 of this Act take  
7     effect January 1, 2010.

  
Speaker-House of Representatives

  
President of Senate

Attest:   
Chief Clerk of House of Representatives

Approved   
Governor

Date March 25, 2009